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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

MOBIL OIL COMPANY, A DIVISION OF SOCONY MOBIL OIL COMPANY, INC., a Corporation,
Petitioner,

vs.

LOCAL 7-644, OIL, CHEMICAL AND ATOMIC WORKERS, INTERNATIONAL UNION, AFL-CIO, a Voluntary Unincorporated Association,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

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LOCAL 7-644, OIL, CHEMICAL AND ATOMIC WORKERS, INTERNATIONAL UNION, AFL-CIO, a Voluntary Unincorporated Association,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Petitioner prays that a writ of certiorari be issued to review the judgment entered by the United States Court of Appeals for the Seventh Circuit on July 29, 1965, and which judgment became final on September 9, 1965, by the denial of a petition for rehearing on that date.

The Court of Appeals, by a two to one majority, reversed the judgment of the United States District Court for the Eastern District of Illinois which denied enforcement of an arbitration award which resulted from two arbitration proceedings conducted under the arbitration provisions of a collective bargaining agreement entered into between Petitioner and Respondent.

OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 350 F. 2d 708, and is set forth as an appendix to this petition. The opinion of the District Court is set forth in the appendix record filed with this petition.[1]

GROUND OF JURISDICTION OF THIS COURT.

(1) The date of the judgment sought to be reviewed is July 29, 1965.

(2) An order denying Petitioner's petition for a rehearing was entered on September 9, 1965.

(3) The statutory provision conferring jurisdiction on this Court to review the judgment by writ of certiorari is Title 28, U. S. C., § 1254 (1).

QUESTIONS PRESENTED.

The principal question presented is whether in reviewing, and upholding, an arbitrator's award, a federal court may ignore the clear evidence that the arbitrator exceeded the scope of his authority and dispensed his own brand of industrial justice.[2]

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[1] The appendix record is cited herein as "Ap. R."

[2] In addition, the following subsidiary question is presented:

> Whether, in reviewing the judgment of a district court, a court of appeals has the authority to substitute a contrary determination on the basis of an indeterminate standard, for the district court's conclusion that an arbitrator exceeded the scope of his authority.

This question is so directly related to the principal question that, if Petitioner's position with respect to the latter should be accepted, it would be appropriate for the Court also to review the subsidiary question. In order to preserve Petitioner's position with respect to the latter issue, the matter is specifically adverted to herein.

STATUTE INVOLVED.

Section 301 (a) of the Labor Management Relations Act, 61 Stat. 156, 29 U. S. C., § 185 (a), provides as follows:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF CASE.

1. Nature of Case and Its Disposition.

This litigation was instituted by Respondent Union against the Petitioning Company, to compel enforcement of an arbitrator's award. The United States District Court for the Eastern District of Illinois refused to enforce the award on the ground that it was arbitrary and capricious, held it invalid and unenforceable and entered judgment for the Company. The Union appealed such judgment to the United States Court of Appeals for the Seventh Circuit. In a two to one decision, the Seventh Circuit reversed the judgment of the District Court.

2. Facts.

The Company and the Union were parties to a labor agreement which expired June 1, 1962. When they were unable to agree on terms of a new agreement, the Union conducted a six month strike against the Company which began August 7, 1962, and ended February 4, 1963.

During the strike, the Company and the Union discussed the question of the extent of the vacation benefits that would be accorded, in 1963, to the strikers after they returned to work (Ap. R. 18-19; 37). The Company took the position that 1963 vacation benefits should be reduced one-half since the employees had performed no service during the six months they were on strike; the Union, on the other hand, took the position that there should be no reduction in 1963 vacations even though the employees had not worked during the six months' strike (Ap. R. 19; 37).

By letter to the Union dated January 31, 1963 (Ap. R. 31-32) and delivered to it through the Federal Mediator who participated in the negotiations, the Company "confirmed" its previous statements that the 1963 vacation benefits for the striking employees "will be handled" in accordance with the position it had taken in its negotiations with the Union. This letter was delivered to the Union prior to final agreement on the terms of a new working agreement. The Union neither rejected nor objected to the Company's January 31 letter, and, on February 4, 1963, the employees returned to work. On that date the Company posted return-to-work instructions stating, among other things: "Your 1963 vacation will be reduced by half due to the six-months strike" (Ap. R. 24, 52, 61). On the same date—February 4, 1963—the Company and the Union executed a new 1963-1964 labor agreement the vacation provisions of which made no specific reference to 1963 vacation benefits for strikers.

On March 14, 1963, the Union filed a grievance contesting the reduction of 1963 vacations. On August 24, 1963, a hearing on this grievance was held before Arbitrator Daugherty. The Union and the Company agreed at that time that the issue raised by the grievance and which was to be submitted to the arbitrator was (Ap. R. 50):

"Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining Unit? If so, what remedy is proper?"

The major part of the testimony and evidence introduced both by the Union and the Company at the August hearing dealt with the substance of the back-to-work negotiations (Ap. R. 19), and the brief and argument of both the Company and the Union, as the Arbitrator recognized, were directed almost exclusively to this subject (Ap. R. 52).

In an Opinion dated October 21, 1963, the Arbitrator addressed himself to the question of whether the Union had agreed to the Company's reduced vacation condition as set forth in the Company's January 31, 1963 letter, and stated that the evidence with respect to this matter was completely and hopelessly in direct conflict. The Arbitrator further stated that he was in no position to resolve that conflict (Ap. R. 56, 60). Accordingly, the Arbitrator directed the Company and the Union to examine his Opinion and to endeavor to resolve the back-to-work agreement issue between them, further stating that if they could not, he would reopen the hearing (Ap. R. 30).

The Company and the Union could not resolve the back-to-work issue, so notified the Arbitrator, and a second hearing was convened. The Arbitrator refused, however, to hear further evidence on the question of the existence of a back-to-work agreement concerning the reduction of 1963 vacations. As a result, the Company declined to participate further and the Arbitrator concluded the hearing in the Company's absence (Ap. R. 45-46).

The Arbitrator then wrote a second opinion dated February 17, 1964. In it he held the Company had no right to reduce 1963 vacations despite the six-month strike and

directed and ordered the Company to pay to each of its employees any difference between what it actually did pay them for 1963 vacations and what it should have paid them (according to the Arbitrator), without any reduction of the vacations (Ap. R. 49).

In his **first opinion**, the Arbitrator held (Ap. R. 52-53):

> "In respect to this back-to-work agreement question, the Arbitrator now rules that he does not have to and will not make a finding thereon until and unless he finds unequivocally that under the main or regular controlling agreement on vacations, the Company did not have the right to put its proposals and its February 4, 1963, notice into effect."

In his **second opinion**, despite the above-quoted holding in his first opinion, the Arbitrator stated (Ap. R. 46):

> "After listening to the parties during said off-record exchanges, the Arbitrator made it known that he had already finally decided against the Company the issue on the disputed back-to-work settlement, and would not hear further testimony thereon."

In the Union brief filed with the Arbitrator after the first hearing, the Union, in referring to the January 31, 1963, letter from the Company stating its position in regard to vacations, argued that (Ap. R. 20, 60):

> "The letters submitted by the Company were either not understood by the negotiating committee for the Union as a condition of the settlement stipulation, or else confusion existed because of the transmittal of these proposals by the Mediator."

3. Decisions Below.

a. District Court.

The District Court held that the Arbitrator's award was arbitrary and capricious because the Arbitrator, in effect, had written a new contract for the parties by inserting into the February 1963 working agreement provisions to which the parties themselves had not agreed (Ap. R. 43-76). Thus the District Court reasoned: (1) The Arbitrator's finding, as indicated in his October 1963 Opinion, that the Union membership had "rejected" the back-to-work condition regarding 1963 vacation benefits set forth in the Company's letter of January 31, 1963, is inconsistent with the Union's record position on the matter—namely, that the letter was "not understood" by the Union (Ap. R. 68); (2) The Arbitrator's finding that the Union had concurred in certain of the conditions set forth in the Company's January 31, 1963 letter, was inconsistent with his further finding that the Union had rejected the Company's condition in the same letter with respect to 1963 vacations (Ap. R. 69-70); (3) There was "no basis or any force of fact" to support the Arbitrator's conclusion that the Company's January 31, 1963, letter violated Article XII of the parties' February 1963 labor agreement, because the letter was written before the Agreement was executed (Ap. R. 67); and (4) The parties' February 1963 labor agreement was not concerned with events that transpired before its execution, and did not mention vacations "earned or unearned" in the year before such execution (Ap. R. 70).

b. Court of Appeals.

The two judge majority of the Court of Appeals, citing **United Steelworkers of America v. Enterprise Wheel & Car Corp.**, 363 U. S. 593 (1960), stated that the district court had erred in considering afresh the merits of the

dispute submitted for arbitration, and held that the Arbitrator had not exceeded his authority, "even though we might disagree with the Arbitrator's decision if we were to examine the merits of the dispute." Dissenting, the Hon. Judge Schnackenberg said:

> The district court was right in concluding that the Arbitrator, whether from utter confusion or otherwise, had resorted to "his own brand of industrial justice" in reaching the award which he made.

BASIS FOR FEDERAL JURISDICTION.

Jurisdiction of this action was properly vested in the first instance in the United States District Court for the Eastern District of Illinois since the Company, licensed to do business in the State of Illinois, maintained a refinery within such district, the Union represented the employees at such refinery, and the suit involved a violation of a contract within the meaning of Section 301 (a) of the Labor-Management Relations Act, as amended, 29 U. S. C. Section 185 (a).

REASONS FOR GRANTING THE WRIT.

This case presents a question of great and critical concern to the field of labor law. The question, one that has plagued and confused the federal courts since the decision in **United Steelworkers v. Enterprise Wheel and Car Corp.**, 363 U. S. 593 (1960), is clearly presented in this case and centers upon the interpretation of the following pronouncement at 363 U. S. 597:

> ". . . [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective

bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

What does this language mean? Certainly, it does not mean that arbitrators can properly call upon the courts to rubber stamp whatever they may do. Yet, here, the Seventh Circuit has endowed an arbitrator with an infallibility and sanctity far beyond that required for the harmonious and peaceful settlement of labor disputes.

1. The decision of the court below, both in its reasoning and in its result, is in conflict with the decision of the Court of Appeals for the Fourth Circuit in **Textile Workers Union of America v. American Thread Company**, 291 F. 2d 894 (1961).

In the **American Thread** case, the Company involved refused to abide by an arbitrator's award holding that the offense for which a concededly guilty employee had been discharged did not amount to just cause. The arbitrator had ordered that the discharge be reduced to suspension without pay for one week. The Union involved, party to the collective bargaining contract under which the arbitration had been held, instituted suit in the district court under Section 301 of the Labor Management Relations Act of 1947, to enforce the arbitrator's award. The district court refused to enforce, apparently on the ground that the arbitrator had exceeded his authority. The Fourth Circuit, with Chief Judge Sobeloff dissenting, affirmed the judgment of the district court.

The court held that by undertaking to decide the appriateness of the Company's disciplinary practice, the arbitrator had exceeded the scope of his authority derived from the stipulation of submission and from the contract under which the stipulation was framed. In so holding, the court pointed out, among other relevant con-

siderations, that, by the terms of the contract, the employer's exercise of a reserved right to discipline might be made the subject of a grievance and of collective bargaining but not of arbitration.

The Fourth Circuit's holding in the **American Thread** case stemmed from its understanding of the meaning of **United Steelworkers of America v. Warrior and Gulf Navigation Company**, 363 U. S. 574 (1960); **United Steelworkers of America v. Enterprise Wheel and Car Corp.**, 363 U. S. 593 (1960); and **United Steelworkers of America v. American Manufacturing Company**, 363 U. S. 564 (1960).

With respect to those cases, the court said (291 F. 2d at 899):

> We are not persuaded that the Supreme Court, in recent cases involving arbitration and the right to enforcement of arbitration agreements, intended that the courts should permit an arbitrator to render decisions which do such violence to the clear, plain, exact and unambiguous terms of the submission and the contract of the contending parties.

The **American Thread** case shows, it is submitted, that the Fourth Circuit is prepared to review fully the relevant facts and circumstances in order to ascertain whether an arbitrator had ignored the issues submitted to him and had in fact created a new contract for the parties. This approach clashes directly with the approach of the Seventh Circuit which, although acknowledging the doctrine that an arbitrator manifests an infidelity to his obligation if he does not draw the award from the essence of the controlling labor agreement, nevertheless appears unwilling to conduct a meaningful inquiry to determine whether the arbitrator has exceeded his authority. The Seventh Circuit in the instant case recognized that the "controlling

agreement(s)" included the "new collective bargaining contract as well as any back-to-work agreement" (Op. 5). Nevertheless, the court, although admitting that the bargaining contract was silent about any reduction because of absence from work, validated the award made by the arbitrator based solely on the basis of the bargaining contract.[3] In short, the arbitrator created a new contract for which the parties had not bargained, and the Court of Appeals majority sanctioned the arbitrator's action.

2. The question of the standard which a reviewing court is to apply in determining the validity of an arbitration award—a question which is clearly raised by the instant case—is of paramount importance. Not only has this Court said that the federal courts are to fashion a new federal law pertaining to collective agreements, **Textile Workers v. Lincoln Mills**, 353 U. S. 448 (1957), but in the arbitration trilogy, **Warrior and Gulf**, **Enterprise Wheel**, and **American Manufacturers**, *supra*, the Court elevated the arbitral process to a position where today it is perhaps the most important means available for the peaceful settlement of industrial disputes.

Although the Supreme Court thus enhanced the arbitral process, it also placed a clear limitation upon the scope of the arbitrator's powers. As previously stated in this Petition, the Court, in the **Enterprise Wheel** case, 363 U. S. at 597, warned that an arbitrator's award "is legitimate only so long as it draws its essence from the collec-

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[3] It is to be noted that in his first Opinion, the Arbitrator originally recognized the materiality and controlling importance of a back-to-work agreement between the parties, having stated, moreover, that if his award were to "hang" on this matter, the Union's grievance could not be upheld (Ap. R. 56, 57). Inconsistently, however, when the Arbitrator ultimately made his award, he completely ignored the matter of a back-to-work agreement and rested his decision instead on the bargaining agreement (Ap. R. 11-12).

tive bargaining agreement," and that an arbitrator "does not sit to dispense his own brand of industrial justice."

Obviously, the Fourth and Seventh Circuits do not agree on the meaning that is to be given the **Enterprise Wheel** language. Other Courts of Appeal, moreover, also appear to place different interpretations on the language. Thus, although the Fifth Circuit has noted that "when the action is a post-arbitration suit to enforce an award, the court's role is not over when it finds that the arbitrator has jurisdiction to act," **Marble Prod. Co. of Ga. v. Local 155, United Stone and All. Prod. W.**, 335 F. 2d 468, 471 (1964), the Sixth Circuit has said that the argument that an arbitrator exceeded his authority was a question involving the merits of a dispute and could not even be inquired into by the federal courts, **United Steel Workers v. Timken Roller Bearing Company**, 324 F. 2d 738, 740 (1963). The Fifth Circuit appears to apply the same standard that the Fourth Circuit applied in the **American Thread Case**, *supra*. It said in **International Association of Machinists v. Hayes Corporation**, 296 F. 2d 238, 242-243 (1961):

> To compel arbitration in the first instance is not to approve carte blanche in advance any decision which might be reached. The arbitrator is not a free agent dispensing his own brand of industrial justice. And if the award is arbitrary, capricious or not adequately grounded in the basic collective bargaining contract, it will not be enforced by the courts.

Accord: **H. K. Porter Company v. United Saw, File and Steel Workers**, 333 F. 2d 596 (C. A. 3, 1964).

At least a partial reason for the different standards of review presently applied by the Courts of Appeal has been suggested by the Hon. Paul R. Hays, Judge of the United States Court of Appeals for the Second Circuit, in "The

Future of Labor Arbitration," 74 Yale Law Journal 1019, 1020 (1965). Judge Hays, drawing a distinction between the matter of the arbitrator's **jurisdiction** and the matter of his **authority**, wrote: "In the words of the Second Circuit, the arbitrator has **jurisdiction** to be wrong. The question is whether he has **authority** to decide issues contrary to the provisions of the contract." See, in this connection, **Carey v. General Electric Co.**, 315 F. 2d 499, 508 (1963), where the Second Circuit said with respect to the arbitrator's authority:

> Should his decision or the remedy exceed the bounds of his authority as established by the collective bargaining agreement, that abuse of authority is remediable in an action to vacate the award.

Unfortunately, in this case the Seventh Circuit did not sufficiently review the issues presented in order to ascertain whether the arbitrator ignored the issues submitted to him and had, in fact, created a new contract for the parties. The Seventh Circuit confused the Supreme Court's admonition that a court cannot refuse to enforce an arbitration award merely because its interpretation of a labor agreement differs from that of the arbitrator with the equally firm doctrine that a reviewing court should not enforce an arbitrary award which exceeds the bounds of the arbitrator's authority. As stated by the Second Circuit, the arbitrator has **jurisdiction** to be wrong, but not **authority** to ignore the issues submitted to him and to create a new contract for the disputing parties.

The majority of the Seventh Circuit adopted the "rubber stamp" approach, completely ignoring this Court's admonition that an arbitrator cannot be allowed to dispense "his own brand of industrial justice."

More than five years have now elapsed since the Court issued the opinions in the **Warrior & Gulf** trilogy. It is

submitted that in view of the extreme importance of the matter to both litigants and reviewing courts, the Court should now provide further guidance with respect to the standard to be applied in the judicial review of arbitration awards.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

In the
United States Court of Appeals
For the Seventh Circuit

No. 14,896 September Term, 1964 — April Session, 1965

Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO, a Voluntary Unincorporated Association,

Plaintiff-Appellee,

v.

Mobil Oil Company, a Division of Socony Mobil Oil Company, Inc., a Corporation,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Illinois.

July 23, 1965.

Before Duffy, Schnackenberg, and Swygert, Circuit Judges.

Swygert, Circuit Judge. This is an appeal from the district court's order denying an [illegible] the arbitration award made pursuant to a collective bargaining agreement entered into between plaintiff Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and defendant Mobil Oil Company, a Division of Socony Mobil Oil Company, Inc. This action is brought under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a).

The principal question

APPENDIX.

In the
United States Court of Appeals
For the Seventh Circuit.

No. 14930 September Term, 1964 April Session, 1965

Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO, a Voluntary Unincorporated Association,
Plaintiff-Appellant,
v.
Mobil Oil Company, a Division of Socony Mobil Oil Company, Inc., a Corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Illinois.

July 29, 1965.

Before Duffy, Schnackenberg, and Swygert, Circuit Judges.

Swygert, Circuit Judge. This is an appeal from the district court's order denying enforcement of an arbitration award made pursuant to a collective bargaining agreement entered into between plaintiff Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO and defendant Mobil Oil Company, a division of Socony Mobil Oil Company, Inc. The action in the district court was instituted under section 301 of the Labor Management Relations Act, 29 U. S. C., § 185.

The principal questions are whether the arbitrator ignored the issue submitted to him for decision and whether

he exceeded his authority by ordering enforcement of a contractual term not agreed to by the parties, but created by himself.

Mobil and Local 7-644 had been parties to a labor agreement that expired June 1, 1962. When they were unable to agree on a new contract, the union conducted an economic strike for approximately six months. The strike began August 7, 1962, and ended February 4, 1963. During the strike the company and the union continued to bargain not only for a new agreement but also for back-to-work conditions which would prevail if and when the strike ended. The company took the position that its employees' 1963 vacations should be reduced by one-half because they had not worked during the six months they were on strike. The union argued that there should be no reduction. The company's position was stated in a letter dated January 31, 1963, addressed to the union and signed by its manager, H. A. Lutz.[1]

On February 4, 1963, a new one-year working agreement was entered into and the employees returned to work.

---

[1] The Lutz letter reads in pertinent part:

January 31, 1963

Local 7-644, OCA WIU
243-a Collinsville Avenue
East St. Louis, Illinois

Attn: Mr. T. E. Roberts, President

Gentlemen:

This is to confirm our statements to you that vacations for Union-represented employees returning to work from strike will be handled in the following manner:

* * * * * * * *

(b) The 1963 vacation benefits of all Union-represented employees shall be reduced on account of the strike by one-twelfth (1/12) for each month an employee had less than a minimum total of two (2) weeks' or ten (10) working days' pay in a calendar month.

* * * * * * * *

Yours very truly,

H. A. Lutz,
Refinery Manager.

Article XII of the contract dealt with vacations. On the same day the contract was signed, the company posted a notice containing return-to-work instructions. The notice included the statement, "Your 1963 vacation will be reduced by half due to the six-month strike." Thereafter the union filed a grievance alleging that the company had violated Article XII. In accordance with the provisions of the contract an arbitrator was selected to resolve the grievance. The issue was framed by agreement as follows: "Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining unit? If so, what remedy is proper?" The arbitration clause of the contract provided that the decision of the arbitrator should be conclusive.

The arbitrator conducted two hearings. At the conclusion of the first hearing he rendered an opinion in which he considered Article XII and the so-called Lutz letter. He also discussed the evidence relating to both matters. Essentially, the arbitrator stated that if Article XII gave the company the right to treat the 1963 vacations as it did, there was no need to determine whether the Lutz letter had been accepted by the union and thereby had become a part of the back-to-work agreement.

The arbitrator reached the conclusion that Article XII did not directly specify any minimum number of days that must be worked in one year in order for an employee to qualify for a vacation the next year. The arbitrator noted that Article XII contained the provision that vacations with pay will be arranged "in accordance with the Company's established plan" and that no evidence had been presented with regard to the existence of a separate company vacation plan. He then proceeded to discuss the Lutz letter and the back-to-work negotiations. On the issue of whether the terms contained in the letter had been accepted by the union, the arbitrator stated that after care-

ful study of the transcript and exhibits he was of the opinion that the evidence was "completely and hopelessly in direct conflict." He found that the evidence was so inconclusive on this issue that it afforded no basis for a resolution of the grievance. He therefore requested that the parties attempt to agree on whether there was in existence a company established plan requiring a minimum number of days worked in a preceding year in order for an employee to earn a full vacation. The arbitrator indicated that if the parties were unable to agree on the facts relating to this question, he would conduct a further hearing and hear testimony.

When the parties were unable to resolve the question, the arbitrator held a supplemental hearing. At this hearing, the company proffered additional evidence on the back-to-work negotiations concerning a reduction of 1963 vacations. The arbitrator explained that he had already finally decided the issue on the disputed back-to-work settlement and that he would receive testimony only on whether the company had an established plan for vacations. After hearing testimony offered by the union on this question, the arbitrator found that the company had never adopted an established plan on vacations other than that contained in Article XII. He concluded that although this article provided that an employee who had accumulated a given number of years of active service received a paid vacation of corresponding length, it was silent about any reduction of vacation because of absence from work. On this basis he decided that paragraph (b) of the Lutz letter and the company notice reducing the 1963 vacations violated Article XII. Thereupon, the arbitrator directed the company to pay each of its employees any difference between what it actually paid for vacation time during 1963 and what it should have paid under his decision.

In denying enforcement of the award, the district judge was of the view that the arbitrator had made a new con-

tract for the parties and that the sole question for arbitration was whether there was a back-to-work agreement whereby the employees were to receive vacation pay on a reduced basis as outlined in the Lutz letter. After noting that the new agreement commenced February 4, 1963, the judge held that unless the contract specifically includes occurrences or events that happened by reason of facts that exist prior to the execution, the vacation rights of the employees are extinguished. The reasoning of the court seems to have been that since there had been a strike during the interval between the two bargaining agreements, those on strike had lost their status as "employees" and thus could not have been granted the vacation benefits provided by Article XII of the new agreement since these benefits were based upon the employees' length of service with the company. The district court failed to recognize that absence from work because of an economic strike does not constitute a termination of the employer-employee relationship and does not vitiate the continuous service of an employee. The arbitrator, on the other hand, took the position that the employees "had not lost their agreement rights by the time they had returned to work" simply because they had performed no work during the strike. In other words, the arbitrator recognized that employees who engage in a lawful economic strike may retain full vacation benefits, gained in part under a terminated contract and in part during the period of the strike, if the new contract executed is susceptible of such interpretation.

The company contends that the arbitrator manifested an infidelity to his obligation to draw the award from the essence of the labor agreement. It further contends that he ignored the issue submitted to him and in effect created a new contract for the parties. We are impelled to reject these contentions. The opinion of the arbitrator indicates that he was fully cognizant of the issue presented to him for decision and that he did not go beyond the scope of his authority in rendering his award. The issue was not

confined, as the district judge thought, to whether the back-to-work agreement included the conditions set forth in the Lutz letter. The issue was whether the company violated the controlling agreement(s) with respect to the 1963 vacations. The "controlling agreement(s)" included the new collective bargaining contract as well as any back-to-work agreement.

A court's role in reviewing arbitration decisions made pursuant to labor contracts is severely circumscribed. "(S)o far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." **United Steelworkers of America v. Enterprise Wheel & Car Corp.**, 363 U. S. 593, 599 (1960). The district court erred in considering afresh the merits of the dispute submitted for arbitration. Even though we might disagree with the arbitrator's decision if we were to examine the merits of the dispute, there is nothing in the record to indicate that the award was arbitrary or that the arbitrator exceeded his authority.

The judgment of the district court is reversed.

Circuit Judge Schnackenberg, dissenting.

The district court was right in concluding that the arbitrator, whether from utter confusion or otherwise, had resorted to "his own brand of industrial injustice" in reaching the award which he made. The court's conclusion is fully supported by the record. I would affirm the district court.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60610

July 29, 1965

Before
Hon. F. Ryan Duffy, Circuit Judge
Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge

Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO, a Voluntary Unincorporated Association,
Plaintiff-Appellant,

No. 14930. vs.

Mobil Oil Company, a Division of Socony Mobil Oil Company, Inc., a Corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Illinois.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed with costs in accordance with the opinion of this court filed this day.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Thursday, September 9, 1965

Before
Hon. F. Ryan Duffy, Circuit Judge
Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge

Local 7-644 Oil, Chemical and Atomic Workers International Union, AFL-CIO,
Plaintiff-Appellant,

No. 14930. vs.

Mobil Oil Company, etc.,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Illinois.

It Is Ordered that the petition for a rehearing of this cause be, and the same is hereby Denied.

(Schnackenberg, C. J. voted to grant the petition for rehearing.)

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

MOBIL OIL COMPANY, A DIVISION OF SOCONY MOBIL OIL COMPANY, INC., a Corporation,
Petitioner,

vs.

LOCAL 7-644 OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, a Voluntary Unincorporated Association,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF

For Respondent, Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO in Opposition.

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Statute Cited.

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No. .....

IN THE

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vs.

LOCAL 7-644 OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, a Voluntary Unincorporated Association,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF

For Respondent, Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO in Opposition.

OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 350 F. 2d 708. The opinion of the District Court is set forth in the appendix record Petitioner filed with its petition.[1]

[1] Petitioner cited the appendix record as "Ap. R.". The same citation is used by respondent in this Brief in Opposition.

JURISDICTION.

The Court of Appeals entered its judgment on July 29, 1965, and denied a petition for re-hearing on September 9, 1965. The petition for certiorari was filed on December 6, 1965. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

Whether the decision of the Court of Appeals for the Seventh Circuit in reversing the District Court and upholding and enforcing the arbitrator's award was within the authority of the Court of Appeals?

STATUTE INVOLVED.

Section 301 (a) of the Labor Management Relations Act, as amended, 61 Stat. 156, 29 U. S. C., Section 185 (a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT.

1. Nature of the Case and Disposition.

Complaint was filed by Respondent Union[2] against Petitioner Company[3] seeking enforcement of an arbitration award in the United States District Court for the Eastern District of Illinois under Section 301 (a) of the Labor Management Relations Act, 29 U. S. C., Section 185 (a). The District Court issued an order denying enforcement of the award and entered judgment for the Petitioner. Respondent appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit reversed the judgment of the District Court, finding that the award of the arbitrator was not arbitrary, that the arbitrator did not exceed his authority, and that the arbitrator's award was based upon the collective bargaining agreement of the parties.

2. The Facts.

The Union and the Company, after an economic strike of approximately six months duration, executed a collective bargaining agreement on February 4, 1963. Article XIV of said agreement provided for the filing of grievances and arbitration (Ap. R. 4). On March 14, 1963, the Union filed a grievance alleging that the Company had violated Article XII of the collective bargaining agreement in that Defendant had reduced by one-half the 1963 vacations for all employees covered by said agreement (Ap. R. 2). Pursuant to Article XIV, Arbitrator Carroll R. Daugherty was selected by the Union and the Company from a panel obtained from the Federal

---

[2] Respondent will hereafter be designated as Union in this Brief.

[3] Petitioner will hereafter be referred to as Company in this Brief.

Mediation and Conciliation Service. Said Article XIV provided that the decision of the arbitrator shall be conclusive and binding on both parties (Ap. R. 4).

On August 24, 1963, a hearing on this grievance was held before Arbitrator Daugherty. At the hearing representatives of the Union and the Company submitted the following stipulated issue for determination by the arbitrator (Ap. R. 50):

> "Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining unit? If so, what remedy is proper?"

On October 21, 1963, Arbitrator Daugherty issued his Opinion and Findings remanding to the Union and the Company for attempted resolution by them the sole question as to whether or not the Company had an "established plan" under Article XII of the collective bargaining agreement for a designated number of days or hours to be worked to entitle an employee to a vacation[4] (Ap. R. 30).

The Company and the Union were unable to resolve the sole question of fact presented by the arbitrator, and on January 24, 1964, a supplemental hearing was held by Arbitrator Daugherty. The arbitrator advised the Company and the Union that the only testimony and argument he would entertain was with reference to the

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[4] The Company in its petition for writ of certiorari to this Court on page 5 asserts that the arbitrator directed "the Company and the Union to examine his Opinion and to endeavor to resolve the back-to-work agreement issue between them. . . ." The Opinion of the arbitrator clearly states that the sole issue of fact for attempted resolution by the Company and the Union was whether or not there was an "established plan". The Opinion of the arbitrator did not, as the Company incorrectly asserts, remand to the parties any fact question on the issue of the back-to-work agreement.

existence or non-existence of an "established plan" for vacation eligibility in connection with Article XII of the collective bargaining agreement (Ap. R. 46).

The arbitrator issued his Final Opinion and Findings dated February 17, 1964, in which he held that the Company had violated the collective bargaining agreement by reducing the vacation benefits of all employees for 1963 by one-half because of the economic strike. The arbitrator directed the Company to "pay to each of its employees here properly involved any difference between what it actually did pay him for his 1963 vacation and what it should have paid him under both the rulings set forth just below under Award" (Ap. R. 49).

3. **Decisions Below.**

a. **District Court.**

The District Court held that the arbitrator's award was arbitrary, capricious and not "adequately" grounded in the basic collective bargaining contract and denied enforcement of the arbitrator's award (Ap. R. 76). The District Court in its Opinion erroneously found that the question submitted to the arbitrator "was whether or not there was a back to work agreement and whether or not under it the plaintiffs (sic) were to receive full vacation pay on a reduced basis as outlined in Paragraph (b) of the Lutz letter" (Ap. R. 74). The District Court's finding with respect to the issue is in conflict with the stipulated issue before the arbitrator which stipulated issue is set forth in the opinion of the District Court as follows (Ap. R. 23, 50):

> "Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining unit? If so, what remedy is proper?"

b. Court of Appeals.

The Court of Appeals by majority decision reversed the District Court, finding that the arbitrator "was fully cognizant of the issue presented to him for decision" and that the arbitrator "did not go beyond the scope of his authority in rendering his award" (Pet. A. 19).[5] The Court of Appeals held that the District Court had erred in concluding that the issue was confined to the back to work agreement and found that the issue before the arbitrator was whether the Company had violated the "controlling agreement(s)" with respect to the 1963 vacations and that the term "controlling agreement(s)" included the "new collective bargaining contract as well as any back to work agreement" (Pet. A. 19, 20). The Court of Appeals determined there was "nothing in the record to indicate that the award was arbitrary or that the arbitrator exceeded his authority" (Pet. A. 20).

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[5] Reference is made to the Appendix attached to the Petition for Writ of Certiorari.

ARGUMENT.

The Company urges this Court to grant a writ of certiorari and contends that the decision of the Court of Appeals for the Seventh Circuit in this case is in conflict with the decision of the Court of Appeals for the Fourth Circuit in **Textile Workers Union of America v. American Thread Company,** 291 F. 2d 894 (1961). The Company further contends that there is ambiguity and misunderstanding among the courts of appeals with reference to the question of what standard a reviewing court is to apply in determining the validity of an arbitration award. The Union submits that both contentions are without merit.

1. The Decision of the Court Below Is Not in Conflict With the Decision of the Court of Appeals for the Fourth Circuit in Textile Workers of America v. American Thread Company, 291 F. 2d 894 (1961).

In the **American Thread Company** case the Court of Appeals for the Fourth Circuit found that the arbitrator had exceeded his authority under **both** the collective bargaining agreement and the submission agreement when he undertook to decide the question of the "appropriateness of the employers' consistent disciplinary practice". The Fourth Circuit at page 900 stated:

> "Neither the contract nor the submission gave the arbitrator any right to disregard established disciplinary practices, consistently applied, and to dispense his own brand of industrial justice".

The majority of the Fourth Circuit then went on to say, l. c. 901:

> "Thus, in aid of his search for justification of his action the arbitrator manifested a disregard for the terms of the submission and a determination to exceed,

if necessary, the limits of the authority and power conferred upon him. This we cannot approve".

There is no conflict between the decision of the Fourth Circuit in the **American Thread** case and the decision of the Court of Appeals for the Seventh Circuit in the instant case.

The majority of the Seventh Circuit, in its opinion, pointed out that the arbitrator was acting within his authority under the stipulated submission agreement presented to him by the parties at the arbitration hearing. The Seventh Circuit recognized that the District Court had erred when it found that the arbitrator had made a new contract for the parties and further erred because the "district judge was of the view that the arbitrator had made a new contract for the parties and that the sole question for arbitration was whether there was a back to work agreement whereby the employees were to receive vacation pay on a reduced basis as outlined in the Lutz letter" (Pet. A. 18, 19).

In its opinion the Seventh Circuit noted the erroneous conclusions of the District Court with reference to the employer-employee relationship when a work stoppage occurs. The Seventh Circuit stated (Pet. A. 19):

> "The district court failed to recognize that absence from work because of an economic strike does not constitute a termination of the employer-employee relationship and does not vitiate the continuous service of an employee. The arbitrator, on the other hand, took the position that the employees 'had not lost their agreement rights by the time they had returned to work' simply because they had performed no work during the strike. In other words, the arbitrator recognized that employees who engage in a lawful economic strike may retain full vacation benefits, gained in part under a terminated contract and in part during

the period of the strike, if the new contract executed is susceptible of such interpretation."

The Seventh Circuit concluded (Pet. A. 19, 20):

"The opinion of the arbitrator indicates that he was fully cognizant of the issue presented to him for decision and that he did not go beyond the scope of his authority in rendering his award. The issue was not confined, as the district judge thought, to whether the back-to-work agreement included the conditions set forth in the Lutz letter. The issue was whether the company violated the controlling agreement(s) with respect to the 1963 vacations. The 'controlling agreement(s)' included the new collective bargaining contract as well as any back-to-work agreement."

The Seventh Circuit found that the award of the arbitrator was not arbitrary or beyond the authority of the arbitrator. In so doing, the Seventh Circuit acted within the scope of the controlling decisions issued by this Court and known as the Trilogy.[6]

In direct contradiction of its contention that the arbitrator made a "new contract" for the parties, the Company in its petition for writ of certiorari (p. 11, footnote 3) asserts that the arbitrator "rested his decision instead on the bargaining agreement."

This Court has clearly enunciated the function of the judiciary in reviewing an award of an arbitrator. This Court also has delineated the scope of authority of an arbitrator and determined that the arbitrator derives his authority from the collective bargaining agreement and so long as he contains himself within that authority, his decision is to be given full force and effect. In United

[6] United Steelworkers of America v. American Manufacturing Company, 363 U. S. 564; United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U. S. 574; United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593.

Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593, 597, 598, 599, this Court pointed out as follows:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.
>
> . . . . . .
>
> Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement.
>
> . . . . . .
>
> Respondent's major argument seems to be that by applying correct principles of law to the interpretation of the collective bargaining agreement it can be determined that the agreement did not so provide, and that therefore the arbitrator's decision was not based upon the contract. The acceptance of this view would require courts, even under the standard arbitration clause, to review the merits of every construction of the contract. This plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final . . . It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

2. In This Case the Question of the Standard Which a Reviewing Court Is to Apply in Determining the Validity of an Arbitration Award Is Clear; Namely, Whether the Arbitrator Acted Within His Authority Under the Submission Agreement.

It is crystal clear from a reading of the opinion of the Seventh Circuit that the test applied by the Seventh Circuit in this case was whether or not the arbitrator acted within the scope of his authority under the submission agreement stipulated to and submitted by the parties at the arbitration hearing. The Seventh Circuit in line with the pronouncement in **United Steelworkers of America v. Enterprise Wheel and Car Corporation,** 363 U. S. 593, 597, that an arbitrator's award "is legitimate only so long as it draws its essence from the collective bargaining agreement . . .", found in this case that the award of Arbitrator Daugherty drew its essence from the submission agreement which, by its very nature, included the collective bargaining agreement.

In its attempt to illustrate disagreement among various Courts of Appeals on the subject of enforceability of arbitration awards, the Company, in its petition, cites several cases. It is submitted that there is no disagreement between the Courts of Appeals on the issue decided by the Seventh Circuit in this case. For example, on page 12 of its petition the Company argues in **Marble Products Co. of Georgia v. Local 155, United Stone and Allied Products Workers of America,** 335 F. 2d 468, 471 (1964), that the Fifth Circuit held that a court must look to the authority of the arbitrator in addition to the jurisdiction of the arbitrator. There is no disagreement between the Fifth Circuit and the Seventh Circuit on this point. The Seventh Circuit specifically found that Arbitrator Daugherty acted within the scope of his authority in rendering his award.

The Company, on page 12 of its petition, citing **United Steel Workers v. Timken Roller Bearing Company,** 324

F. 2d 738, incorrectly argues that the Sixth Circuit there held that the courts could not inquire into the question of whether the arbitrator exceeded his authority. The Sixth Circuit reached no such conclusion in that case and on the contrary found that the arbitrator whose opinion was under scrutiny acted within the scope of his authority and within the confines of the collective bargaining agreement. In the instant case, the Seventh Circuit made a similar finding with respect to the opinion and award of Arbitrator Daugherty.

CONCLUSION.

Because of the absence of any conflict between the decisions of the Seventh Circuit in this case and the Fourth Circuit in the **American Thread Company** case and because of the lack of any other valid reason for issuance of the writ sought by the Company, the Union prays that the Court deny the Company's petition for writ of certiorari.

Respectfully submitted,

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